

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on February 10, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Karl Ohs (R)

Members Absent: None.

Staff Present: Deb Thompson, Committee Secretary
Kathleen Williams, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 485, HB 539, 2/8/1999
Executive Action: HB 183; HB 412

HEARING ON HOUSE BILL 485

Sponsor: Rep. Shiell Anderson presented the bill. The Board of Land commissioners are directed to obtain fair market value for the management of State Trust Lands. Approximately 600 thousand acres of these trust lands are classified as forest lands, managed by the DNRC under the State Forest Management Plan. The plan calls for long term, sustainable timber harvest as a preferred method of managing state forest lands but it also allows for site specific alternatives to timber harvest if those alternatives generate equal amounts of revenue. In recent years conservation groups and local citizen groups opposed to certain timber sales proposals on state lands have expressed interest in purchasing conservation licenses in lieu of a timber sale. These are ten year special use permits which essentially defer the timber sale and they are not permanent conservation easements.

Proponents: Cary Hegreberg, representing Montana Wood Products Association, spoke in support of the bill. The bill asks for equity, fairness and fiduciary responsibility. If the environmental consequences of harvesting timber are analyzed in a MEPA document then the environmental consequences of not harvesting the timber and allowing insects, disease and drought to take out a stand of timber which might ultimately burn up, that should be analyzed in a MEPA document as well. If a timber purchaser must make an up-front case, deposit and post a bond to the state to protect the trust, then somebody purchasing a conservation license in lieu of the timber sale should be required to post the same bond. If a timber purchaser would improve the condition of water quality in a drainage through road improvements, such as culvert replacement, bridge replacement, BMP's, etc., then the conservation license should require the same elements in a contract. He provided an example of a proposal and contract, signed by Patrick Flowers, Chief of the Forest Management Bureau. **EXHIBIT(nah33a01)** This is an example of the provisions for returning payment to the state in bonding, forest and road improvement fees, etc., and the actual costs in terms of the contract. **{Tape : 1; Side : A; Approx. Time Counter : 6.5 - 10.7}**

Patrick Heffernan, representing the Montana Logging Association, supported the bill. He pointed out it created equity and was fair for the trust.

Joe Lamson, representing the Office of Public Instruction and Nancy Keenan as a member of the Land Board, spoke as a proponent. He said the bill made it possible to work out good agreements. He pointed out the language may be too strict and may have the

effect of forcing the board to re-do an EIS causing delays and costs.

Opponents: Tary Mocabee, Friends of the Wild Swan, spoke as an opponent. She felt this rewarded the status quo. She thought the bill would make it harder to get a conservation license.

Janet Ellis, Audubon Society, said these would put penalties and barriers up for the citizens. She felt conservation licenses should be acknowledged as an option routinely.

Denise Roth Barber, spoke in opposition to the bill. She felt the bill's provisions created obstacles rather than alternatives to timber sales.

Informational Witness: Bud Clinch, Director of DNRC, discussed negotiated settlements. He said only three conservation licenses had ever been issued. One was in 1991 issued to the Friends of the Wild Swan in a negotiated settlement. That license has a price tag of \$7,000 for ten years, developed during the negotiations of the settlement of the trial. The second license was issued to Mary Hart and Burt Sugarman on Whitefish Lake. This property bordered their home. The potential lost interest income to the school trust on the proposed timber sale calculated to be \$3,000 a year for a ten year period. The third license was issued on the Two Crow, a fourteen acre parcel, deferred ten years calculated to be \$518 per year. He said after figuring the lost interest, most groups are reluctant to proceed. They continue in the MEPA process to get their concerns mitigated. The individuals work the process all the way along. Only when they get to final stage do they decide they should do a conservation license. This bill would allow this to be known up front to allow for more sincere negotiations early on in the process. ***{Tape : 1; Side : A; Approx. Time Counter : 24.2 - 30.1}***

Questions from Committee Members and Responses: Rep. Erickson asked if the environmental review process could address conservation licenses up front. Rep. Anderson replied if the review process was done on every proposed timber sale and conservation easement it would add to the cost. If someone is interested in having a conservation easement, they should come in early at the start of the process. Bud Clinch asked if Rep. Erickson meant if it was routine as part of the MEPA process to include in the analysis an alternative that would include the issuance of a conservation license for deferral of the timber harvest. The calculation is not the problem, the problem in most timber sales is the prohibitive price tag. The concerned party will come in at a later stage and want a smaller portion. The

problem with that proposal is that is not known up front. **{Tape : 1; Side : A; Approx. Time Counter : 30.7 - 35.6}**

Rep. Ewer asked if timber sale analysis recognized the "viewshed" in determining a request for a timber conservation license. Clinch replied the MEPA process starts 24 months in advance. There is the initial scoping meetings, proposal developments, draft, comments, and at any time in the process the opportunity exists for interested parties to raise the issue and make suggestions to the department. If the issue was raised and brought to the department's attention, an alternative could be drafted instead of the timber sale. Tary Mocabee addressed the request for a conservation easement. A major amount of money would be difficult to raise. Rep. Ewer asked about timing. Anderson clarified the sales are well noticed and those who might want to put on a conservation easement know from the start that this will go through the review process. **{Tape : 1; Side : A; Approx. Time Counter : 35.7 - 43.2}**

Rep. Harper asked if there was flexibility when it comes to accepting a bid. He said it appeared that someone wanting a conservation license would have to be able to out bid a timber company. Clinch discussed the process. The intent is to make sure the person trying to secure the conservation license would be obligated in a competitive bid process to at least pay the amount that the timber purchaser would in the bid amount. Prior to this bill, the department would go off to the side and negotiate with the conservation licensee based on the minimum bid amount that the sale was put out for. It is not really fair since the timber company cannot buy at the minimum, they have to bid on it. The conservation license person should bid on it as well. Rep. Harper described an example of a bid going to a logging company. The state gets the money and is left with a clear cut. If a conservation group, with a lower bid, were to get the easement the state gets the money and still has the entire resource left plus the habitat. He asked if there should be an adjustment made for this reason. Clinch said this was true. The process in the past proceeds when the value of the timber is established. The lost interest income is calculated and that is what the license is charged for. In a conservation license, the purchaser is not buying the timber, they are buying the right to defer that for a ten year period of time. They are not charged the rate of the timber, they are charged the hypothetical amount of lost interest earnings if it had been sold at that amount and put the money into the trust and had collected interest based on the current rate of return. There is a differential in what the actual cost of the license would be. It would be a discounted amount of the bid amount. The process is

the most equitable way to deal with the issue, protecting the trust beneficiaries by really only charging lost interest income.

Rep. Mood asked about the Audubon Society's lease with State Land. Ms. Ellis discussed the Flathead area lease. She said the lease has been held since 1978, paying \$550 per year for the 422 acres. However, the recent bill from State Lands was \$22,100 per year. It went from \$1 to \$50 per acre even though it is flood plain and can't be developed. Director Clinch responded that this illustrated the issue of fiduciary responsibility of managing school trust lands. As the increased appraised value of land occurs in Montana, the department must make sure that the lease rental rates are proportionate. **{Tape : 1; Side : A; Approx. Time Counter : 50.9 - 54.3}**

Rep. Bitney asked about a contrast between a conservation easement versus cabin site leases, if there was more value computed into lake site cabins. Clinch replied the department's approach is to come up with a lease that reflects full market value. Cabin site leases are leased at 3.5% of the appraised value of the land according to statute. There is no direction of how to do it on conservation leases for timber sales other than the process that has evolved in trying to calculate what the lost interest is off of there.

{Tape : 1; Side : B}

Clinch discussed the bonding requirement. The reference about forest improvements is something new. On any timber sale, in addition to the purchase price in the sale of timber there is another price that the contractor must pay and that can be up to 25% of the total cost. This provides for the activities that need to go into road maintenance, stream enhancements and other various environmental concerns associated with the project. This bill would require the conservation license applicant to share in those costs as well.

Rep. Wagner noted the timber sale bids do not cover the cost of the timber cutting, trucking, manufacturing and sale of products which produce jobs in the communities. He asked if there was any consideration to those aspects. Lamson replied it did not address any economic consequences of foregoing a revenue creating activity. He pointed out the company would calculate the value of the timber and then deducts all the purchaser due costs before submitting the bid to the state. The bill would address environmental improvements associated with a timber sale, such as replacing culverts that are creating water quality problems, replacing a bridge that is letting sediment into a stream - by not doing the timber sale you would be foregoing that activity that is improving the condition of the water shed. It is the

timber sale that is paying for it. He pointed out conservation easements were allowed in lieu of timber sales and this bill would be fair.

Closing by Sponsor: Rep. Anderson closed. He pointed out these two interests could not be equal as far as the benefit to the school trust. If this is going to be the trend then they will know going in from the start what the rules of the game are. It is not fair if a conservation license is given a deal separate from the bid process.

HEARING ON HOUSE BILL 539

Sponsor: Rep. Paul Sliter, HD 76, presented the bill. He said the bill would allow for the elimination of the requirement for a Governor designee to serve as Executive Director of the Flathead Basin Commission. That person had not been attending the commission meetings. The bill would allow the Commission to hire staff where previously the Governor's Office hired the staff.

Proponents: Dave Mihelic, representing the Governor's Office, spoke in support of the bill. He pointed out the staff individual was located in Kalispell. This should be the responsibility of the Commission. ***{Tape : 1; Side : B; Approx. Time Counter : 10.4 - 13.1}***

Patrick Heffernan, Montana Logging Association, worked with the Flathead Basin Commission on water quality issues, discussed this as efficiency of state government.

Cary Hegreberg, spoke as a proponent.

Opponents: None

Questions from Committee Members and Responses: Rep. McGee asked about the funding for the Commission. Mr. Mihelic responded that operating money for the public information officer is in the Executive Budget. He explained the Commission promotes economic development within the basin while maintaining water quality. The Commission is citizen driven, voluntary and works with the forest product industry and agriculture industry as opposed to the alternative under the TMDL process of the heavy hand of federal regulation.

Rep. Hurdle asked about the purpose of the Commission. Mihelic replied the Commission was established in 1980. The Flathead Basin extends to Canada and was established when a Canadian coal mine was threatening the water quality in the basin. Mihelic

described the citizen members that represent the forest products industry, the agricultural industry, two county members and two members from the conservation districts. The Commission addresses the Total Maximum Daily Load (TMDL) law that is mandated by the Clean Water Act under the federal EPA as it has been delegated to the states in Montana. The Flathead Basin is the first to set a limit to measure the water quality. The Commission does that in a voluntary manner and through Best Management Practices (BMP) tries to encourage those contributors to non-point source pollution to engage in those BMP's to meet that TMDL. They try to meet that federal process without regulation strictly through voluntary means.

Rep. Harper discussed the legislation that he and Chief Justice Turnage carried in 1983. In that time the fear was development on the North Fork of the Flathead of coal development. The focus of this Commission was water quality. The mission was never specified in the statute. He said it seemed like the mission had changed and migrated since that threat had been removed. Now there is an economic development focus. Mihelic replied in Title 75 it says the purpose of the Flathead Basin Commission is to protect the existing high quality of the Flathead Lake aquatic environment, the water that flows into or out of or are tributaries to the lake and the natural resources and environment of the Flathead Basin. Under 75-7-304, the duties of the Commission are to monitor the existing condition of the basin.

{Tape : 1; Side : B; Approx. Time Counter : 28.5}

Rep. Harper asked about the permanent staff. Mihelic said this was the public information staff who maintains an office in Kalispell. Rep. Harper asked why the direct connection established between the Commission and the Governor's Office was changing since it had an explicit purpose which was to raise this to the highest level. It was an urgent issue at that point in time. He said he was concerned that this would become a self perpetuating bureaucracy where they could hire their own staff and come in for their own funding. He asked if the original purpose been accomplished and has the Commission moved on to other purposes to keep itself going. Mihelic referred to Title 75 regarding the duties of the Commission which would probably never be completed. The creation of the Commission was in response to the Cabin Creek Coal Mine, however, the duties of water quality monitoring downstream and the protection of the pristine quality of Flathead Lake is still necessary.

Rep. Dale asked about the philosophy of the Commission in regards to mining. Mihelic responded the Commission is represented by different interests, for example the vice chair is from Plum

Creek Timber Company, the citizen member is a rancher. **{Tape : 1; Side : B; Approx. Time Counter : 40.2 - 43}**

Closing by Sponsor: Rep. Sliter closed.

EXECUTIVE ACTION ON HOUSE BILL 412

Rep. Stovall **MOVED DO PASS**. He commented that he was impressed by those who spoke at the hearing. It was not difficult to change the names. Rep. Tuss remarked on the quality of the testimony as to the sincerity and the obvious offense of the word. She **MOVED** an amendment. She said the amendment was #202. They spell out how to accomplish this. The question was called. The motion **PASSED** unanimously.

Rep. Harper suggested that whatever group developed the names that they attempt to uncover native names or appropriate historical names. This could be addressed by the Coordinator of Indian Affairs Office.

Rep. Tash pointed out this only takes place as the signs are destroyed.

The question was called. The motion **PASSED** unanimously. **{Tape : 1; Side : B; Approx. Time Counter : 57.4}**

EXECUTIVE ACTION ON HOUSE BILL 183

The bill was presented as a "Grey Bill". Rep. Younkin **MOVED DO PASS** and **MOVED** the amendment. Rep. Ewer noted the subcommittee was unanimous in their approval of the bill.

{Tape : 2; Side : A}

Rep. Dale pointed out the bill simplifies some regulatory applications, some definitions that will enable the agency to regulate better or more effectively and those who seek to be participants in a mining proposal.

Rep. Younkin discussed the amendments. The question was called on the amendments. The motion **PASSED** unanimously. **{Tape : 2; Side : A; Approx. Time Counter : 4}**

Rep. Dale pointed out the sand and gravel industry had concerns about the ten year permit renewal, since it was currently longer term. The objective of the department was to provide information to update reclamation plans to update their records.

Rep. Harper asked about a "contained" facility to prevent the escape of mercury and if this was vague. Pete Strazdas from the Department of Environmental Quality said there were no regulations previous to this proposed change other than those provided by the Water Quality Act. This bill seeks to give inspectors and regulators authority to require mercury to be used in a facility which will not allow escape into the environment.

Rep. Eggers asked what a contained facility was. Strazdas replied the intention was to have either a cement floor or stock tank, anything that would prevent spilled mercury from getting into the soil or into the water. This would allow the department to act when they find improper use. **{Tape : 2; Side : A; Approx. Time Counter : 13}**

Rep. Younkin **MOVED** an amendment, #308. This applies to page 24 of the Grey Bill. The amendment would limit the groups to which the \$50 application fee is needed to mine bentonite, clay, scoria, sand or gravel. Peat and soil materials needs to come out of the bill to avoid the CI-75 problem since the \$50 fee already applies. The question was called. The motion **PASSED** unanimously.

Rep. Younkin **MOVED** the bill as amended. The question was called. The motion **PASSED** unanimously.

ADJOURNMENT

Adjournment: 5:50 A.M.

REP. BILL TASH, Chairman

DEB THOMPSON, Secretary

BT/DT

EXHIBIT (nah33aad)